Supreme Court, U.S.
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No. 85-1033

In The
Supreme Court Of The United States

OCTOBER TERM, 1985

JOHN J. KELLY,
CONNECTICUT CHIEF STATE'S ATTORNEY, ET AL.,
Petitioner,

v.

CAROLYN ROBINSON,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

BRIEF IN OPPOSITION
WITH ATTACHED APPENDIX

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STATEMENT OF THE CASE

The respondent, Carolyn Robinson, agrees generally with the statement of the case as set forth in the petition, pages 1 through 8, except for the first paragraph of the statement in which the petitioners characterize the basic question raised by their petition, and except for the omission of a factual matter that has a bearing on the petition.

The respondent maintains that the basic question raised by this petition is whether the prepetition criminal restitution obligation, duly listed and scheduled in the respondent's bankruptcy, was a "debt" as that term is defined in the Bankruptcy Code, and if so, whether that debt was discharged in this particular bankruptcy case.

The factual matter omitted from the petitioners' statement of the case involves the stay of state court proceedings agreed to by the parties and ordered by the Connecticut Superior Court. Shortly after the respondent brought the present adversary proceeding in the bankruptcy court seeking a determination of the dischargeability of her criminal restitution obligation and other relief, the Connecticut Office of Adult Probation (COAP) brought a complaint against her in Connecticut Superior Court for violation of probation, claiming that she was in arrears on her $100 monthly restitution payments and claiming as well that respondent's restitution obligation was not dischargeable in her bankruptcy. On April 26, 1984, upon agreement of respondent, COAP and the Chief State's Attorney, the Connecticut Superior Court ordered a

stay of proceedings in COAP's complaint pending the final determination, including the final determination of any appeals, of the respondent's adversary proceeding in the bankruptcy court. Respondent's App. at 1A-6A.

SUMMARY OF ARGUMENT

1. The decision of the Second Circuit Court of Appeals in this case is a narrow one, based on the peculiar facts of this particular case; the decision does not have a significant impact upon the administration of criminal justice.

2. The Second Circuit was correct in deciding that the respondent's pre-petition criminal restitution obligation was a "debt" as that term is defined in the Bankruptcy Code.

3. The petitioners could have obtained a determination from the bankruptcy court, pursuant to 11 U.S.C. §§523(a)(4) and 523(c), that the criminal restitution obligation was nondischargeable in respondent's bankruptcy; however, petitioners failed to do this because they failed to file a complaint in the bank-

ruptcy court seeking such a determination within the required time, or at any time. Accordingly, the debt was discharged.

4. Petitioners' reliance upon 11 U.S.C. §523(a)(7) for their claim that the criminal restitution obligation was non-dischargeable was erroneous because the restitution obligation served the function of providing "compensation for actual pecuniary loss."

5. The decision of the Second Circuit in this case does not conflict with any of the decisions of other U.S. Courts of Appeals.

REASONS FOR DENYING THE PETITION FOR WRIT OF CERTIORARI

I. THERE ARE NO SPECIAL OR IMPORTANT CIRCUMSTANCES REQUIRING THE SUPREME COURT'S REVIEW OF THIS ACTION.

The present case decided by the Second Circuit Court of Appeal does not involve a decision which conflicts with this Court's prior decisions or which conflicts with prior decisions by other Courts of Appeals. Nor does this case involve a broad question of federal law which should be reviewed by this Court. Instead, this case involves a narrow question of law based upon its own set of facts. The Second Circuit decided this question of federal statutory law consistent with the language and meaning of the statute. As such, petitioner cannot demonstrate any special circumstances requiring this Court's review of this case.

The underlying facts in this case are not in dispute and are set forth in detail in the Petition, pages 1-8 and in the

Petitioners' Appendix, pages 3A-5A and 31A-34A. The respondent, Carolyn Robinson, filed her voluntary Chapter 7 bankruptcy petition and schedules on February 5, 1981. In her schedules she listed the petitioners, Connecticut Department of Income Maintenance (CDIM) for her indebtedness in the amount of $6,000 for public assistance benefits and Connecticut Office of Adult Probation (COAP) for her indebtedness in the amount of $9,932.95 based upon a criminal restitution order. The criminal restitution order had resulted from a larceny conviction (based upon respondent's wrongful receipt of public assistance benefits while she was simultaneously receiving Social Security benefits), and had been ordered by the Connecticut Superior Court on November 14, 1980.

On February 20, 1981, the bankruptcy court notified both CDIM and CCAP of the respondent's Chapter 7 bankruptcy petition, and informed each of them that April 27, 1981, was the last day for the filing of objections to discharge and "complaints to determine the dischargeability of any debt pursuant to 11 U.S.C. §523(c)." This gave CDIM and COAP each a total of 66 days for the filing of such a complaint. If petitioners had needed additional time they could have requested it from the bankruptcy court pursuant to Bankruptcy Rule 4007(c). Neither CDIM nor CCAP ever filed any complaint to determine the dischargeability of respondent's criminal restitution obligation. Accordingly, pursuant to 11 U.S.C. §523(c), the petitioners waived their rights to object to the dischargeability of the respondent's criminal restitution obligation, and that debt was, therefore, discharged.

It is well recognized that a debt which might otherwise be nondischargeable in bankruptcy under §523(a)(2) (fraud, false pretenses or false representations), §523(a)(4) (larceny, embezzlement, defalcation or fraud) or §523(a)(6) (willful and malicious injury) will nevertheless be discharged in the debtor's bankruptcy unless a timely complaint is filed in the bankruptcy court objecting to the dischargeability of that debt. 11 U.S.C. §523(c); Bankruptcy Rule 4007(c); In re Gutierrez, 15 B.R. 268 (N.D. Ill. 1981); In re Hawley, 23 B.R. 236 (Bankr. E.D. Mich. 1982); In re Rowan, 15 B.R. 834 (Bankr. N.D. Ohio 1981). Essentially, this is a major point being made by the Second Circuit in the present case. Petitioners' App. at 48A-50A. Since the petitioners never filed any complaint in the bankruptcy court

objecting to the dischargeability of the criminal restitution obligation, that debt was discharged.

The petitioners argue that the pre-petition criminal restitution obligation should not be considered a "debt," and therefore the discharge provisions of the Bankruptcy Code should not apply. However, "debt" is defined in the Code as "liability on a claim," 11 U.S.C. §101(11), and "claim" is defined in an extremely broad manner. See 11 U.S.C. §101(4); see also Ohio v. Kovacs, 105 S. Ct. 705 (1985). The legislative reports indicate that the broadest possible definition was intended for the term "claim." The Second Circuit's analysis of the meaning of the terms "debt" and "claim" is extremely thorough and persuasive. Petitioners' App. at 34A-48A.

It is clear that the restitution obligation in this case is a "debt" as definded in the Bankruptcy Code.

The petitioners' second argument is that even if the restitution obligation is a "debt," it should be considered nondischargeable under §523(a)(7). Since nondischargeable debts of the §523(a)(7) variety are not subject to the requirements of §523(c), the petitioners would not be required to file a complaint in the bankruptcy court objecting to dischargeability. For a debt to be nondischargeable under §523(a)(7) it must be a "fine, penalty or forfeiture," and it must meet each of the following three criteria:

1. it must be payable to a governmental unit;

2. it must be payable for the benefit of a governmental unit; and

3. it must not be compensation for actual pecuniary loss.

Since many criminal restitution obligations are payable for the benefit of a private party victim, they could never be nondischargeable under §§523(a)(7). In the present case, although the restitution obligation is payable for the benefit of a state agency victim, it still does not come within the nondischargeability ambit of §523(a)(7) because it represents "compensation for actual pecuniary loss." The amount of the restitution order was $9,932.95; this is the precise amount claimed to have been wrongfully received by the respondent for which she was prosecuted. This amount was payable for the benefit of the state agency victim. Although fines and penalties which do not benefit the victim serve the functions of punishment and rehabilitation, the function of restitution as such is to provide the victim compensation for pecuniary loss. See Conn. Gen.

Stat. §53a-30(a)(4)(1985); and see United States v. Dudley, 739 F.2d 175 at 177 (4th Cir. 1984).

Petitioners argue that if §523(a)(7) does not apply to criminal restitution obligations there may be occasions in the future when certain criminal restitution obligations would fall outside the scope of the various nondischargeable debt categories listed under §523(a) and would, therefore, be discharged in bankruptcy. This argument does not apply to the present case since the present restitution obligation would have been nondischargeable under either §523(a)(2) or §523(a)(4) if petitioners had filed a complaint in the bankruptcy court. Petitioners cite at p. 22 of their Petition examples such as restitution arising from crimes of reckless burning or negligent assault with a deadly weapon. Possibly these may be nondischargeable under §523(a)(6) as willful and malicious

injuries. However, to the extent that there are a few restitution orders that are ultimately dischargeable in bankruptcy it simply means that the policies and priorities established by Congress through the Bankruptcy Code shall prevail; this results from the impact of the supremacy clause. See Perez v. Campbell, 91 S. Ct. 1704, 1708-1713 (1971).

Petitioners finally argue that the general doctrine enunciated in Younger v. Harris, 401 U.S. 37 (1971), including the notion of a proper respect for state functions, should govern and should lead to a determination that criminal restitution obligations cannot be discharged in bankruptcy. The Younger doctrine does not relate to the issue of the dischargeability of debts in bankruptcy. Debts owing to states and debts resulting from state court judgments are clearly

dischargeable in bankruptcy. See 11 U.S.C. 524(a). The Younger doctrine involves the issue of abstention by a federal court from enjoining a state court proceeding. However, in the present case the state court ordered a stay of the criminal proceedings pending a final determination of the bankruptcy dischargeability question by the federal court. Respondent's App. at 1A-6A. Accordingly, the Younger doctrine does not apply to this case.

II. THE DECISION OF THE SECOND CIRCUIT DOES NOT CONFLICT WITH ANY OF THE DECISIONS OF OTHER COURTS OF APPEALS

The present case involves the question of the dischargeability of a prepetition criminal restitution obligation duly listed and scheduled in the respondent's bankruptcy. None of the five Courts of Appeals decisions cited by petitioners involves a criminal restitution obligation

actually in effect on the date of filing the debtor's bankruptcy. This is a significant distinction since a debt must already be in existence at the time of the filing of a bankruptcy petition in order for it to be affected by the bankruptcy discharge. 11 U.S.C. §727(b).

Both United States v. Carson, 669 F.2d 216 (5th Cir. 1982) and United States v. Alexander, 743 F.2d 472 (7th Cir. 1984) were concerned with criminal restitution orders entered after the debtor had obtained a dishcarge in bankruptcy. These cases did not involve a prepetition restitution obligation wherein a listed creditor failed to contest dischargeability.

The cases of In re Davis, 691 F.2d 176 (3rd Cir. 1982), Barnette v. Evans, 673 F.2d 1250 (11th Cir. 1982) and McDonald v. Burrows, 731 F.2d 294 (5th Cir. 1984) all involved the Younger doctrine of

abstention and held that a federal court should not enjoin a state criminal proceeding. None of these cases holds that a duly listed and scheduled prepetition restitution order is nondischargeable in bankruptcy. In fact, the Davis opinion strongly suggests that the entry of a criminal restitution order in that case would conflict with the Bankruptcy Code, but the court abstains under the Younger doctrine. See also In re Goree, 12 B.C.D. 746 (Bankr. W.D. Ky. 1985).

None of these five Courts of Appeals decisions conflicts with the decision of the Second Circuit in the present case.

III. CONCLUSION

This case does not require this Court's review. Indeed the decision of the Second Circuit Court of Appeals is correct

and proper, and therefore the petition for writ of certiorari should be denied.

Respectfully submitted,

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No. 85-1033

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APPENDIX

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A. Motion For Stay, filed in case of State of Connecticut v. Carolyn Robinson, Dkt. No. CR6-185844..... 1A

B. Order, entered by Judge of the Connecticut Superior Court in case of State of Connecticut v. Carolyn Robinson, Dkt. No. CR6-185844..... 5A

NO. CR6-185844

STATE OF CONNECTICUT	:	SUPERIOR COURT
		G.A.#6,
V.	:	AT NEW HAVEN
CAROLYN ROBINSON	:	APRIL 25, 1984

MOTION FOR STAY

The defendant, Carolyn Robinson, moves for a stay of proceedings in this Court with regard to the complaint of Viclation of Probation filed against her, and in support of her motion she represents the following:

1. On February 5, 1981, the defendant, Carolyn Robinson, filed her Chapter 7 petition for relief in bankruptcy in the U.S. Bankruptcy Court for the District of connecticut, Case No. 5-81-114, and was granted an order for relief pursuant to 11 U.S.C. §§301 and 362.

2. Duly scheduled in her petition and schedules was her debt to the State of Connecticut Department of Income Maintenance, and the Office of Adult Probation. Notice was sent by the U.S. Bankruptcy Court to each of these entities on February 20, 1981.

3. Prior to the last date for filing a complaint to determine dischargeability of a debt, pursuant to 11 U.S.C. §523(c), no such complaint was filed.

4. The defendant received her Discharge in Bankruptcy on May 14, 1981.

5. The defendant's debt to the State of Connecticut Department of Income Maintenance, and the Office of Adult Probation, was discharged by her Discharge in Bankruptcy. Pursuant to 11 U.S.C. §524, the Discharge voids any judgment at any

time obtained, to the extent that such judgment is a determination of the personal liability of the debtor with respect to any debt discharged under 11 U.S.C §727, and further operates as an injunction against the continuation of an action, the employment of process, or any act, to collect, recover or offset any such debt as a personal liability of the debtor.

6. The defendant has already filed and served a Complaint to Determine Dischargeability of Debt in order to obtain a judicial determination that the restitution debt, involved in this instant Superior Court probation complaint, was discharged in defendant's bankruptcy. Said complaint is pending before the U.S. Bankruptcy Court, Adversary No. 205-5-84-0063, and a trial date has been set for May 18, 1984. The State of Connecticut is a party in said

action in the Bankruptcy Court, and the defendant is seeking both declara-tory and injunctive relief therein.

7. In view of the fact that the issues presently being litigated in the U.S. Bankruptcy Court will be determinative of all or some of the issues involved in this instant Superior Court probation complaint, the defendant is requesting that this instant matter be stayed until there is a final decision, including a final decision on any appeals that may be taken by either party, rendered on the defendant's Complaint pending in the Bankruptcy Court.

8. The defendant recognizes that, pursuant to Conn. Gen. Stat. §53a-31(b), the period of her sentence of probation is interrupted from the date of the issuance of the Notice to Appear (April 16, 1984)

through the entire period of the stay until a final determination as to the alleged violation of probation has been made by this Court.

THE DEFENDANT, CAROLYN ROBINSON

BY: _____
FRANCIS X. DINEEN
HER ATTORNEY
399 Temple Street
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777-4811

O_R_D_E_R

The foregoing motion having been duly presented to this Court, it is hereby

ORDERED: that the proceedings in this Complaint of Violation of Probation be and hereby are stayed pending the final determination, including the final determination of any appeals that may be taken by any party, of the defendant's Complaint, Adv. No. 205-5-84-0063, presently pending in the

U.S. Bankruptcy Court. Pursuant to Conn. Gen. Stat. §53a-31(b), the period of the defendant's sentence of probation is interrupted during the period of this stay of proceedings until a final determination of the alleged violation of probation has been made by this Court.

Sherman Drutman, J.
JUDGE OF THE SUPERIOR COURT

CERTIFICATION

This is to certify that on the 26th day of April, 1984, a copy of the foregoing was handed to Attorney Carl Schuman, Assistant State's Attorney.

FRANCIS X. DINEEN